

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**JAMES ANTHONY MCNALLY**

**PLAINTIFF**

**V.**

**CAUSE NO. 3:17-CV-00847-CWR-JCG**

**DIRECTOR B.O.P. MARK INCH;  
REGIONAL DIRECTOR J.A. KELLER, B.O.P.;  
WARDEN C. NASH, YAZOO MED. F.C.C., B.O.P.;  
DR. UNKNOWN NATAL PHYSICIAN, YAZOO F.C.C., B.O.P.;  
DR. UNKNOWN CHAMBERS PHYSICIAN, YAZOO F.C.C., B.O.P.;  
DR. WILLIAM PORTER CONTRACT SURGEON FOR B.O.P.**

**DEFENDANTS**

**ORDER ADOPTING REPORT AND RECOMMENDATION**

This matter is before the Court on Defendant Dr. William Porter's Objection to the May 6, 2019, Report and Recommendation of United States Magistrate Judge John C. Gargiulo, regarding the Defendant's Motion to Dismiss or in the Alternative for Summary Judgment. The Report and Recommendation recommends that the Defendant's Motion be granted in part and denied in part, namely that *pro se* Plaintiff James Anthony McNally's Eighth Amendment *Bivens* claim against the Defendant be dismissed with prejudice but be construed as a state law medical negligence/malpractice claim over which there is supplemental jurisdiction under 28 U.S.C. § 1367(a).

Having considered said Report and Recommendation, the Defendant's objections thereto, applicable statutory and case law, and being otherwise fully advised in the premises, the Court concludes that the Defendant's Objection fails to persuade and hereby adopts, as its own opinion, the Report and Recommendation of the Magistrate Judge. Defendant advances new arguments in his Objection that were not raised in his original Motion. Accordingly, the new arguments are

more properly considered in the separate motion to dismiss and for summary judgment the Defendant has since filed advancing these and other arguments.

**SO ORDERED**, this the 18th day of September, 2019.

s/ Carlton W. Reeves  
UNITED STATES DISTRICT JUDGE